

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the First Amended Petition to)
Revoke Probation Against:)

EVERETT DOUGLAS ALLEN, M.D.)

Case No. 800-2016-026457

Physician's and Surgeon's)
Certificate No. G 54881)

Respondent.)
_____)

**DENIAL BY OPERATION OF LAW
PETITION FOR RECONSIDERATION**

No action having been taken on the petition for reconsideration, filed by Everett Douglas Allen, M.D., and the time for action having expired at 5 p.m. on February 12, 2018, the petition is deemed denied by operation of law.

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

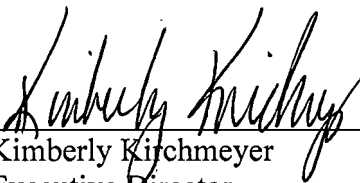
In the Matter of the First Amended Petition to)	
Revoke Probation Against:)	
)	MBC No. 800-2016-026457
)	
EVERETT DOUGLAS ALLEN, M.D.)	
)	
)	ORDER GRANTING STAY
)	(Gov't Code Section 11521)
)	
<u>Respondent</u>)	

Respondent, Everett Douglas Allen, M.D., has filed a Petition for Reconsideration of the Decision in this matter with an effective date of February 2, 2018, at 5:00 p.m.

Execution is stayed until February 12, 2018, at 5:00 p.m.

This stay is granted solely for the purpose of allowing the Board time to review and consider the Petition for Reconsideration.

DATED: February 2, 2018.



Kimberly Kirchmeyer
Executive Director
Medical Board of California

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the First Amended
Petition to Revoke Probation Against:**

EVERETT DOUGLAS ALLEN, M.D.

**Physician's and Surgeon's
Certificate No. G 54881**

Respondent

Case No. 800-2016-026457

DECISION AND ORDER

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

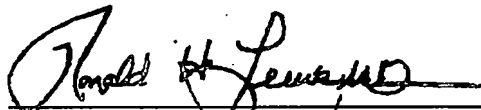
1. First Page, Caption Box, the title of the matter is corrected to read "In the Matter of the First Amended Petition to Revoke Probation Against:"

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 2, 2018.

IT IS SO ORDERED: January 5, 2018.

MEDICAL BOARD OF CALIFORNIA



Ronald H. Lewis, M.D., Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of The Petition to Revoke
Probation Against:

EVERETT DOUGLAS ALLEN, M.D.,
Physician's and Surgeon's Certificate
No. G 54881

Respondent.

Case No. 800-2016-026457

OAH No. 2017061331

PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on November 13, 2017, in Oakland, California.

Deputy Attorney General Greg W. Chambers represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

Everett Douglas Allen, M.D., represented himself and was present for the hearing.

The matter was submitted on November 13, 2017.

FACTUAL FINDINGS

1. Respondent Everett Douglas Allen, M.D., began practicing medicine in California in 1985. He currently holds Physician's and Surgeon's Certificate No. G 54881, which is scheduled to expire on July 31, 2018. The Medical Board of California (Board) has imposed probationary restrictions on respondent's medical practice, as set forth more fully in Finding 9, below.

2. On December 12, 2016, acting in her official capacity as Executive Director of the Board, complainant Kimberly Kirchmeyer filed a petition to revoke respondent's probation. On May 23, 2017, complainant filed a first amended petition. Complainant alleges that respondent has failed to follow several of the requirements of his probation. She seeks an order revoking respondent's probation and, as a result, revoking Certificate No. G 54881.

Professional Experience and Certificate History

3. Respondent is trained in internal medicine. Between 1985 and 1997, he worked in a variety of primary and urgent care clinic and hospital settings in the Bay Area, as well as in a rural clinic in Colusa, California.

4. In December 1997, the Board placed respondent's certificate on probation for five years because of respondent's substance abuse. After extending his probation (for reasons the evidence did not address), the Board discharged respondent from probation in February 2004.

5. Between 1997 and 1999, while on probation, respondent worked in hospitals and primary care clinics in Humboldt and Del Norte Counties. In 1999, respondent began working as a physician at Pelican Bay State Prison in Crescent City, and he continued to work there until late 2005.

6. In late 2005, respondent relapsed into substance abuse. He lost his job at Pelican Bay State Prison; and in March 2007, the Board's Executive Director filed an accusation seeking suspension or revocation of his certificate. Effective May 13, 2009, the Board placed respondent on probation for ten years.

7. The probation terms required respondent to satisfy several prerequisites before returning to medical practice. Respondent did not satisfy those prerequisites promptly, and he also failed to follow other probation conditions. In June 2011, the Board's Executive Director filed a petition to revoke respondent's probation.

8. Following a hearing on that petition, the Board did not revoke respondent's probation. The Board concluded that respondent's noncompliance arose chiefly from his poverty, but that respondent had reasonable prospects for improving his financial circumstances so that he would be able to meet the Board's requirements and ultimately return to medical practice. For these reasons, the Board issued an order effective July 5, 2013, continuing and modifying respondent's probation.

9. The Board's order effective July 5, 2013, included the following terms material to this matter.

a. The order (Condition 1) required respondent to enroll in and to complete the Physician Assessment and Clinical Education (PACE) program at the University of California, San Diego, School of Medicine.

b. The order (Conditions 3 and 4) required respondent to abstain entirely from consuming alcohol or unprescribed controlled substances.

c. To confirm his abstinence from alcohol and controlled substances, the order (Condition 5) required respondent to participate in a biological fluid testing program.

d. The order (Condition 6) required respondent to continue receiving regular psychotherapy, and to have his psychotherapist submit quarterly reports to the Board about respondent's treatment.

e. The order (Condition 7) required respondent to begin making payments to the Board, within 240 days after the order's effective date, to reimburse the Board for respondent's evaluations and probation monitoring.

f. The order (Conditions 1 and 5) permitted respondent to return to medical practice only after completing the PACE program and after completing six months of biological fluid testing without positive tests for alcohol or controlled substances.

g. Once respondent returned to medical practice, the order (Condition 8) forbade him to engage in "the solo practice of medicine." The order specified that this prohibition would apply to any situation in which "respondent is the sole physician practitioner at [a] location."

Substance Abuse Treatment History

10. Respondent struggled for many years with a relapsing substance use disorder. He has undergone several kinds of treatment, including inpatient rehabilitation.

11. Robert Soper, M.D., has been respondent's treating psychiatrist since 1998. Respondent's psychiatric treatment with Dr. Soper has been continuous since then, although they see one another for treatment less frequently now than they did in the past because respondent's condition is stable.

12. Between 2014 and 2016, Dr. Soper was inconsistent in filing quarterly reports with the Board regarding respondent's treatment. He failed to submit timely reports for the second quarter of 2014, the fourth quarter of 2014, and the first and second quarters of 2016. Dr. Soper acknowledged these failures, confirming that he had treated respondent consistently during this period but that he is "terrible with paperwork."

13. Dr. Soper submitted the missing reports in late September 2016. Since then, he has submitted quarterly reports for the third and fourth quarters of 2016 and for the first, second, and third quarters of 2017.

14. At the hearing in 2013 on the June 2011 petition to revoke respondent's probation, Dr. Soper testified that he believed respondent's substance use disorder to be in "long-term remission." He testified to the same effect at the hearing in this matter. This opinion was persuasive and uncontradicted.

Efforts to Return to Medical Practice

15. Respondent received financial support from the California Department of Rehabilitation to pay for the PACE program. Respondent completed that program in April 2015. The Department of Rehabilitation also has paid the fees necessary to renew respondent's certificate through July 31, 2018.

16. Respondent's participation in the biological fluid testing program has been inconsistent. Between 2013 and 2015, the program suspended him several times because he had not paid program fees. Financial support from the Department of Rehabilitation has been unavailable to respondent for this purpose.

a. Respondent did not participate in the biological fluid testing program in July, August, September, or October 2013, because the program had suspended him for nonpayment. He missed three scheduled check-ins in November 2013 and one in December 2013.

b. Respondent did not participate in the biological fluid testing program between March 1 and March 17, 2014, or in December 2014, again because he had not paid. He missed three scheduled check-ins in April 2014; one in May 2014; two in June 2014; and four in November 2014. On one occasion in 2014 respondent missed a test, but the evidence did not establish whether respondent missed this test because he had failed to check in or because he had checked in but then failed to report for testing.

c. Respondent did not participate in the biological fluid testing program between January 2 and January 20, 2015, or between February 16 and February 28, 2015, again because he had not paid. He missed three other scheduled check-ins in February 2015; five in March 2015; one in April 2015; two in May 2015; and one in September 2015. On one occasion in 2015 respondent missed a test, but the evidence did not establish whether respondent missed this test because he had failed to check in or because he had checked in but then failed to report for testing.

d. Respondent missed one scheduled check-in for the biological fluid testing program in April 2016; one in May 2016; and two in August 2016. On one occasion in 2016 respondent missed a test, but the evidence did not establish whether respondent missed this test because he had failed to check in or because he had checked in but then failed to report for testing.

e. Respondent missed tests on June 5, 2017, and on July 30, 2017. On both dates, he had checked in and knew that he should report for testing, but he failed to go. He reported to his probation monitor on June 6 that he had checked in very early in the morning on June 5 but then had forgotten to go in for his test; on July 30, he reported to his probation monitor early in the morning that he could not report for testing that day because he had plans to go with a group on an all-day deep-sea fishing trip.

f. Respondent has never at any time material to this matter had a positive test result for alcohol or controlled substances.

17. By the end of 2015, the Board had deemed respondent eligible to return to medical practice. In January 2016, respondent answered an inquiry from a company, Occu-Med, that was seeking a physician to perform occupational medical examinations for firefighters at the Smith River Fire Protection District (an Occu-Med client). The assignment was for one day (March 4, 2016).

18. Respondent evaluated the terms for the proposed engagement and concluded that it would not violate the probation condition forbidding him from "solo practice." He did not seek Board approval for this engagement before accepting it, however.

19. The Occu-Med engagement required respondent to go to the client's fire station with a team of other examiners, including vision and hearing testers and someone who performed treadmill cardiovascular stress tests. The team brought a mobile examination unit in a trailer to the fire station. Respondent performed physical examinations and recorded his observations on a standardized checklist; in addition, the other team members performed their respective evaluations and recorded their observations.

20. The examination team transmitted its observations to a review team in Occu-Med's central office. Respondent understood the review team to comprise both physicians and attorneys, although the evidence did not establish the identities or qualifications of the persons to whom respondent and the examination team reported their observations.

21. The review team evaluated the examiners' reports against the client's standards and reported to the client which examination candidates did and did not meet the client's standards. Occu-Med did not provide diagnoses or treatment recommendations to the individual persons its team examined, and strictly forbade respondent to do so.

22. Respondent was the only physician on the examination team. Occu-Med specifically sought a licensed physician for this role, and the standardized checklist respondent used to report his examination results stated in several places that Occu-Med intended a licensed physician to complete it. The review team relied on respondent's examination reports; no physician on the review team had any opportunity to examine any candidate personally.

23. Respondent worked again for Occu-Med on July 7, 2016, performing services similar to those he provided in March 2016 for the Smith River Fire Protection District.

24. On September 12, 2016, respondent's Board probation monitor, Brian Joelson, sent a letter to respondent informing him that the Board considered his work for Occu-Med as the solo practice of medicine. The letter stated that further such work "will be considered a violation of your probation."

25. Respondent worked again for Occu-Med on September 14, 2016, October 24 and 25, 2016, and January 3, 2017. On each occasion, he performed services similar to those he provided in March 2016 for the Smith River Fire Protection District.

26. Respondent accepted these assignments from Occu-Med in September and October 2016 and in January 2017 because he had no other medical employment prospects and was in significant financial distress. He intended to file a petition asking the Board to modify his probation conditions to permit him to work again for Occu-Med, but abandoned that plan when he received the petition initiating this matter. Respondent has accepted no further assignments from Occu-Med since January 3, 2017.

27. Complainant issued an order on May 3, 2017, directing respondent not to practice medicine unless and until he receives confirmation from the Board that the Board has approved his practice setting. That order remained in effect on the date of the hearing. Although respondent had requested the Board's approval of a practice setting, as set forth more fully in Finding 34, below, the Board had not yet acted on respondent's request.

Cost Reimbursement

28. Until late 2016, respondent had made no payments to the Board toward the cost reimbursement the Board had ordered in 2013. On September 30, 2016, the Board's records stated that respondent owed the Board about \$35,000 for probation monitoring costs between 2009 and 2016 and for professional evaluations.

29. In September 2016, respondent's Board probation monitor sent respondent a proposed payment plan. Respondent agreed to make payments of \$100 per month beginning in November 2016.

30. Respondent has paid \$400 since November 2016. His last payment occurred in February 2017.

31. Financial support from the Department of Rehabilitation has been unavailable to assist respondent in making these reimbursement payments.

Additional Evidence

32. Dr. Soper has been a psychiatrist in private practice for many years, and also treats mental health patients through the Del Norte County Department of Human Services Mental Health Branch. He knew respondent professionally before becoming respondent's psychiatrist. Respondent and Dr. Soper share a professional interest in serving medically underserved communities and in addiction treatment.

33. Ruby Bayan, M.D., provided a reference letter for respondent. Dr. Bayan knows respondent in part because she is a member of the Humboldt-Del Norte County Medical Society's Physician Well-Being Committee. The committee, which Dr. Soper

chaired for several years, has monitored and supported respondent's efforts to return to medical practice. Dr. Bayan respects respondent's medical skills and particularly his personal commitment to serving Humboldt and Del Norte Counties, which have struggled to attract and retain medical providers.

34. Respondent has sought the Board's approval to take a position as a physician at Waterfront Recovery Services in Eureka. Waterfront Recovery Services is a new alcohol and drug detoxification and inpatient rehabilitation clinic, established as a result of work by a multidisciplinary community committee to bring more, and more effective, substance abuse treatment to Humboldt and Del Norte Counties. If the Board approved his engagement, respondent would perform intake examinations and medical detoxification management for new patients at Waterfront Recovery Services. Dr. Soper and Dr. Bayan both believe strongly that respondent could be an asset to Humboldt and Del Norte Counties if he were able to return to practicing medicine, and in particular if he were able to work in this position.

35. Respondent draws Social Security, which is his only regular source of income. He has significant debts to state governmental agencies other than the Board, and to federal governmental agencies. Respondent's strongest prospect for generating a high enough income to pay for regular biological fluid testing and to pay even a portion of his debt to the Board is for him to return to medical practice in a manner consistent with the probationary limitations on his certificate.

LEGAL CONCLUSIONS

1. The matters stated in Findings 8 and 9.c establish that the Board may revoke respondent's probation for failure to participate in the biological fluid testing program. The matters stated in Finding 16 constitute cause to revoke respondent's probation.

2. The matters stated in Findings 8 and 9.d establish that the Board may revoke respondent's probation for failure to participate in psychotherapy or to have his psychotherapist submit quarterly reports regarding that therapy. The matters stated in Finding 12 constitute cause to revoke respondent's probation.

3. The matters stated in Findings 8 and 9.e establish that the Board may revoke respondent's probation for failure to agree to or to fulfill a payment plan to reimburse the Board for the costs of his probation. The matters stated in Findings 29 and 30 constitute cause to revoke respondent's probation.

4. The matters stated in Findings 8 and 9.g establish that the Board may revoke respondent's probation for engaging without Board approval in the "solo practice of medicine," including where respondent is the "sole physician practitioner" at a site.

a. The practice of medicine includes physical examination to “ascertain or establish whether a person is suffering from any physical or mental disorder.” (Bus. & Prof. Code, §§ 2038, 2052.) Respondent argued that licensed healthcare professionals other than medical doctors, such as physician assistants and nurses, may perform such physical examinations without unlawfully practicing medicine; while true, respondent’s argument overlooks the fact that such non-physicians may perform physical examinations only under physicians’ supervision. (See, e.g., Bus. & Prof. Code, §§ 2725, subds. (b)(4), (c) [nurses], 3502 [physician assistants].) As stated in Findings 19, 23, and 25, respondent performed physical examinations for Occu-Med; as stated in Findings 22, 23, and 25, no other physician supervised respondent for these examinations. Respondent engaged in the practice of medicine with Occu-Med.

b. Respondent argued that his cooperation with Occu-Med’s review team, as described in Findings 20 and 21, meant that he was not practicing medicine alone when he worked at Occu-Med. As stated in Finding 22, however, respondent was the sole physician on duty at any Occu-Med client site, and Occu-Med intended a physician to perform this role. Moreover, while the matters stated in Findings 20 through 22 established that the review team considered respondent’s medical conclusions, they did not establish that the review team collaborated with respondent to make them. Respondent engaged in the “solo practice of medicine” with Occu-Med.

c. The matters stated in Findings 19 through 25 constitute cause to revoke respondent’s probation.

5. With considerable support from his local community, including Dr. Soper, respondent has addressed his substance use disorder. With considerable support from the Board and from the Department of Rehabilitation, respondent also has addressed the decline in his professional competence that resulted ultimately from that disorder. The Board’s 2013 order established two key prerequisites to respondent’s return to medical practice, and respondent has met both of them.

6. Since the Board placed him on probation in 2009, respondent has never complied fully with his probation conditions. Some of this noncompliance has resulted from respondent’s poor choices, such as those described in Findings 9.e, 18, 25, and 30. The matters stated in Findings 8, 16, 26, 31, and 35 show, however, that the chief cause of respondent’s poor compliance has been, and remains, poverty.

7. The efforts respondent, his treatment providers, and the Department of Rehabilitation have made to restore respondent’s ability to practice medicine are now likely to alleviate the poverty that has impaired respondent’s probation compliance. Revocation of respondent’s probation just as these efforts come to fruition would be against the public interest.

8. To protect the public interest and to permit the Board to ensure that respondent continues to practice medicine safely, however, the probation conditions that have applied to

respondent since 2013 must continue. Respondent must maintain strict compliance with the condition requiring biological fluid testing, and immediately must resume compliance with the condition requiring him to make payments to reimburse the Board for his probation monitoring and evaluation fees.

ORDER

1. The first amended petition to revoke probation against respondent Everett Douglas Allen, M.D., is denied.

2. The order of the Medical Board regarding respondent, effective July 5, 2013, remains in effect without modification.

3. Respondent must continue compliance with all aspects of the Medical Board's order effective July 5, 2013. In particular, but without limitation, within 30 days following the effective date of this order, respondent must resume compliance with Condition 7 of that order.

DATED: December 4, 2017

DocuSigned by:

Juliet E. Cox

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JULIET E. COX

Administrative Law Judge

Office of Administrative Hearings

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8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the First Amended Petition to
11 Revoke Probation Against,

Case No. 800-2016-026457

12 **EVERETT DOUGLAS ALLEN, M.D.**
13 **P. O. Box 98**
Crescent City, CA 95531-0098

FIRST AMENDED PETITION TO
REVOKE PROBATION

14 **Physician's and Surgeon's Certificate No. G**
15 **54881**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer ("Complainant") brings this First Amended Petition to Revoke
21 Probation solely in her official capacity as the Executive Director of the Medical Board of
22 California, Department of Consumer Affairs.

23 2. On June 30, 1985, the Medical Board of California issued Physician's and Surgeon's
24 Certificate Number G 54881 to Everett Douglas Allen, M.D. ("Respondent"). The Physician's
25 and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will
26 expire on July 31, 2018, unless renewed.
27
28

3. In a disciplinary action entitled "In the Matter of the Accusation Against Everett Douglas Allen, M.D.," Case No. 13-1993-27767, the Medical Board of California, issued a decision, effective December 26, 1997, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of five (5) years with certain terms and conditions.

4. In a disciplinary action entitled "In the Matter of the Accusation Against Everett Douglas Allen, M.D.," Case No. 12-2005-170456, the Medical Board of California, issued a decision, effective May 13, 2009, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of ten (10) years with certain terms and conditions.

5. In a disciplinary action entitled "In the Matter of Petition to Revoke Probation Against Everett Douglas Allen, M.D.," Case No. D1-2005-170456, the Medical Board of California, issued a decision, effective July 5, 2013, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of ten (10) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

6. On October 2, 2013, Citation No. 25-2013-235727 was issued by the Medical Board of California due to Respondent's failure to comply with the terms and conditions of the July 5, 2013, decision in Case No. D1-2005-170456.

JURISDICTION

7. This First Amended Petition to Revoke Probation is brought before the Medical Board of California ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 8. Section 2227 of the Code provides that a licensee who is found guilty under the
2 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
3 one year, placed on probation and required to pay the costs of probation monitoring, or such other
4 action taken in relation to discipline as the Board deems proper.

5 9. The Board's Decision, effective July 5, 2013, contains the following provision:
6 "Failure to fully comply with any term or condition of probation is a violation of probation. If
7 respondent violates probation in any respect, the Board, after giving respondent notice and the
8 opportunity to be heard, may revoke probation and impose all or any portion of the disciplinary
9 order that was stayed. If an Accusation or Petition to Revoke Probation, or an Interim Suspension
10 Order is filed against respondent during probation, the Board shall have continuing jurisdiction
11 until the matter is final, and the period of probation shall be extended until the matter is final."

12 **FIRST CAUSE TO REVOKE PROBATION**

13 (Failure to Comply Regarding Biological Fluid Testing)

14 10. At all times after the effective date of Respondent's probation, Condition 5 of the
15 Board's Decision stated:

16 "Respondent shall immediately submit to biological fluid testing, at respondent's expense,
17 upon request of the Board or its designee. 'Biological fluid testing' may include, but is not
18 limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by
19 the Board or its designee. Within 60 days of the effective date of this decision, respondent shall
20 contract with a laboratory or service approved in advance by the Board or its designee that will
21 conduct random, unannounced, observed, biological fluid testing. The contract shall require
22 results of the tests to be transmitted by the laboratory or service directly to the Board or its
23 designee within four hours of the results becoming available. Respondent shall maintain this
24 laboratory or service contract during the period of probation. A certified copy of any laboratory
25 test result may be received in evidence in any proceedings between the Board and respondent.

26 "Respondent is prohibited from practicing medicine until the Board or its designee has
27 reviewed biological fluid testing results for a six month continuous period and determined that
28 respondent has established a continuous period of verified sobriety and is safe to practice.

1 "If respondent fails to cooperate in a random biological fluid testing program after the
2 Board or its designee has authorized his return to practice (after the verified six continuous month
3 period of prohibited substance free testing) the Board or its designee shall notify respondent to
4 cease all practice of medicine immediately, and respondent shall immediately comply.
5 Respondent shall not resume the practice of medicine until notified by the Board in writing, or
6 until the issue has been adjudicated through a final decision on an accusation and/or a petition to
7 revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board
8 within 15 days of issuing the notification to cease practice. If the respondent requests a hearing
9 on the accusation and/or petition to revoke probation, the Board shall provide the respondent with
10 a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. A
11 decision shall be submitted to the Board within 15 days of the close of the record, unless good
12 cause can be shown for the delay. Any period of time respondent is subject to the cessation of
13 practice shall not apply to the reduction of the probationary time period.

14 "If the Board does not file an accusation or petition to revoke probation within 15 days of
15 the issuance of the notification to cease practice or does not provide respondent with a hearing
16 within 30 days of a request, the notification and order to cease practice shall be lifted and
17 dissolved."

18 11. Respondent's probation is subject to revocation because he failed to comply with
19 Probation Condition 5 of the Board's Decision, referenced above. The facts and circumstances
20 regarding this violation are as follows:

21 A. On or about July 5, 2013, Respondent enrolled in the FirstLab program for
22 biological fluid testing.

23 B. In 2016, Respondent missed a scheduled test on January 22, 2016 and failed to
24 check in as required by the program on April 8, 2016, May 21, 2016, August 4, 2016, and August
25 6, 2016.

26 C. In 2015, Respondent was suspended from FirstLab for non-payment from January
27 2, 2015 through January 20, 2015 and missed twenty-seven check-ins during the days he was not
28 suspended from the program.

1 D. In 2014, Respondent was suspended from FirstLab for non-payment from
2 February 24, 2014 to March 18, 2014, September 23, 2014, October 23, 2014, and from
3 November 24, 2014 to December 31, 2014 and missed 8 check-ins during the days he was not
4 suspended from the program.

5 E. In 2013, Respondent was suspended from FirstLab for non-payment from July 5,
6 2013 to October 28, 2013 and missed 5 check-ins during the days he was not suspended from the
7 program.

8 12. Respondent's failure to submit to biological fluid testing and comply with the terms
9 of his biological fluid testing obligation constitutes a violation of probation under Condition 5 of
10 the Board's Decision. Therefore, cause exists to impose the disciplinary order of revocation that
11 was stayed.

12 **SECOND CAUSE TO REVOKE PROBATION**

13 (Failure to Submit Quarterly Psychotherapy Status Reports)

14 13. At all times after the effective date of Respondent's probation, Condition 6 stated:
15 "Respondent shall continue receiving psychotherapy until the Board or its designee deems
16 that no further psychotherapy is necessary. Respondent may continue treating with Dr. Robert E.
17 Soper, or shall submit to the Board or its designee for prior approval the name and qualifications
18 of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral
19 degree in psychology and at least five years of postgraduate experience in the diagnosis and
20 treatment of emotional and mental disorders. Respondent shall undergo and continue
21 psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the
22 Board or its designee deems that no further psychotherapy is necessary.

23 "Respondent shall have the treating psychiatrist/psychotherapist submit quarterly status
24 reports to the Board or its designee.

25 "Respondent shall have Dr. Soper submit delinquent reports within 60 days of the effective
26 date of this decision.

27 "The Board or its designee may require respondent to undergo psychiatric evaluations by a
28 Board-appointed board certified psychiatrist. If, prior to the completion of probation, respondent

1 is found to be mentally unfit to resume the practice of medicine without restrictions, the Board
2 shall retain continuing jurisdiction over respondent's license and the period of probation shall be
3 extended until the Board determines that respondent is mentally fit to resume the practice of
4 medicine without restrictions.

5 "Respondent shall pay the cost of all psychotherapy and psychiatric evaluations."

6 14. Respondent's probation is subject to revocation because he failed to comply with
7 Probation Condition 6, referenced above. The facts and circumstances regarding this violation
8 are as follows:

9 A. Dr. Robert Soper, Respondent's treating psychotherapist, has failed to submit the
10 following quarterly therapy reports: Quarter II 2014, Quarter IV 2014, Quarter I 2016, and
11 Quarter II 2016.

12 B. On or about June 26, 2016, the probation monitor sent Respondent a certified non-
13 compliance letter advising him to nominate a new psychotherapist if Dr. Soper was not able to
14 contact her by July 29, 2016.

15 C. On or about July 19, 2016, the probation monitor mailed Dr. Soper a certified
16 letter advising him of the delinquent quarterly reports and that he should submit the reports to the
17 Board no later than July 29, 2016.

18 D. On or about September 19, 2016, a probation monitor again requested that Dr.
19 Soper submit missing reports. Finally, on September 30, 2016, Dr. Soper submitted the missing
20 reports.

21 15. Respondent's failure to timely submit Quarterly Psychotherapy Status Reports to the
22 Board constitutes a violation of probation under Condition 6 of the Board's Decision. Therefore,
23 cause exists to impose the disciplinary order of revocation that was stayed.

24 **THIRD CAUSE TO REVOKE PROBATION**

25 (Failure to Pay Delinquent Costs of Probation)

26 16. At all times after the effective date of Respondent's probation, Condition 7 of the
27 Board's Decision stated:

1 “Within 240 days from the effective date of this decision, respondent shall begin paying the
2 Board or its designee delinquent costs for evaluations and probation monitoring in an installment
3 plan to be approved by the Board or its designee.”

4 17. Respondent’s probation is subject to revocation because he failed to comply with
5 Probation Condition 7 of the Board's Decision, referenced above. The facts and circumstances
6 regarding this violation are as follows:

7 A. Pursuant to the Board’s Order, Respondent’s payments for outstanding delinquent
8 costs were to begin by March 2, 2014.

9 B. On June 30, 2016, the probation monitor e-mailed Respondent to advise him of his
10 outstanding costs. Respondent stated that he had not been able to generate reliable income.

11 C. On September 19, 2016, the probation monitor mailed a proposed payment plan to
12 Respondent and advised Respondent to select a payment plan option and return the signed
13 payment plan form to the Board no later than September 30, 2016. He did not return the form.

14 D. On November 17, 2016, Respondent made a payment of \$100 toward his
15 delinquent costs. Respondent then made monthly payments of \$100 each for December 2016,
16 January 2017, and February 2017. No further payments have been received.

17 18. Respondent’s failure to begin paying the Board or its designee the delinquent costs
18 for evaluations and probation monitoring within 240 days from the effective date of the Board’s
19 Decision constitutes a violation of probation under Condition 7 of the Board’s Decision.
20 Therefore, cause exists to impose the disciplinary order of revocation that was stayed.

21 **FOURTH CAUSE TO REVOKE PROBATION**

22 (Solo Practice of Medicine in Contravention of Probation Terms)

23 19. At all times after the effective date of Respondent’s probation, Condition 8 of the
24 Board's Decision stated:

25 Respondent is prohibited from engaging in the solo practice of medicine.
26 Prohibited solo practice includes, but is not limited to, a practice where:
27 1) respondent merely shares office space with another physician but is not
28 affiliated for purposes of providing patient care, or 2) respondent is the
 sole physician practitioner at that location.

1 Respondent shall not engage in the practiced of medicine until notified in
2 writing by the Board or its designee of its determination that respondent
3 has secured a position that does not constitute solo practice. If, after
4 respondent meets the conditions precedent to his return to practice
5 (successful completion of PACE and biological fluid testing for six
6 months), respondent fails to establish a practice with another physician
or secure employment in an appropriate setting, respondent shall cease
practice and shall not resume practice until an appropriate practice
setting is established.

7 If, during the course of the probation, the respondent's practice setting
8 changes and the respondent is no longer practicing in a setting in
9 compliance with this Decision, the respondentshall notify the Board or its
10 designee within 5 calendar days of the practice setting change. If
11 respondent fails to establish a practice with another physician or secure
12 employment in an appropriate practice setting within 60 calendar days of
13 the practice setting change, the Board or its designee shall order
14 respondent to immediately cease practice, and respondent shall comply
with the order to cease practice within three (3) days, and shall continue
not practicing until such time as the board or its designee advises
respondent otherwise in writing. Respondent shall not resume practice
until the Board confirms that respondent has found an appropriate
practice setting the complies with this condition.

15 20. Respondent's probation is subject to revocation because he failed to comply with
16 Probation Condition 8 of the Board's Decision, referenced above. The facts and circumstances
17 regarding this violation are as follows:

18 A. On April 1, 2016, Respondent stated in an interview with the Medical Board
19 Probation department that on March 4, 2016, he conducted annual physical examinations for
20 firefighters/paramedics on behalf of a company called Occu-Med.

21 B. A July 26, 2016, email from a supervisor at Occu-Med to an employee of the
22 Medical Board of California states that Respondent performed work for Occu-Med on March 4,
23 2016, and July 7, 2016, without another physician present.

24 C. An April 21, 2017, email from Respondent to the Medical Board states that
25 Respondent worked for Occu-Med on September 14, 2016, October 24 – 25, 2016, and January 3,
26 2017, after being informed that working for Occu-Med was a violation of his Solo Practice
27 Prohibition condition.

28 D. On May 3, 2017, the Medical Board issued a Cease Practice Order, prohibiting

1 Respondent from practicing medicine due to his performance on behalf of Occu-Med.

2 E. On May 15, 2017, Respondent spoke by telephone with a Medical Board
3 employee and stated that when Respondent worked for Occu-Med on October 24, 2016, October
4 25, 2016, and January 3, 2017, Respondent was out "in the field" and was the only physician.

5 21. Respondent's failure to adhere to the no solo practice condition of his probation.
6 constitutes a violation of probation under Condition 8 of the Board's Decision. Therefore, cause
7 exists to impose the disciplinary order of revocation that was stayed.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Medical Board of California issue a decision:

11 1. Revoking the probation that was granted by the Medical Board of California in Case
12 No. D1-2005-170456 and imposing the disciplinary order that was stayed thereby revoking
13 Physician's and Surgeon's Certificate No. G 54881 issued to Everett Douglas Allen, M.D.;

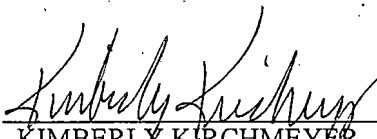
14 2. Revoking or suspending Physician's and Surgeon's Certificate No. G 54881, issued to
15 Everett Douglas Allen, M.D.;

16 3. Revoking, suspending or denying approval of Everett Douglas Allen, M.D.'s
17 authority to supervise physician assistants pursuant to section 3527 of the Code, and advanced
18 practice nurses;

19 4. Ordering Everett Douglas Allen, M.D., to pay the Medical Board of California the
20 costs of probation monitoring, if he is placed on probation;

21 5. Taking such other and further action as deemed necessary and proper.

22
23 DATED: May 23, 2017


24 KIMBERLY KIRCHMEYER
25 Executive Director
26 Medical Board of California
27 Department of Consumer Affairs
28 State of California
Complainant

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Exhibit A

Decision and Order

Medical Board of California Case No. D1-2005-170456

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation)
Against:)
)
EVERETT DOUGLAS ALLEN, M.D.) Case No. D1-2005-170456
)
) OAH No. 2011080419
)
)
)
)
Respondent.)
_____)

DECISION

The Proposed Decision of Ann Elizabeth Sarli, Administrative Law Judge, dated April 24, 2013 is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(C), to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. Page 1, Case No. 19-2011-213748 is stricken and replaced with Case No. D1-2005-170456.

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 5, 2013.

IT IS SO ORDERED June 7, 2013.

MEDICAL BOARD OF CALIFORNIA

MEDICAL BOARD OF CALIFORNIA
I do hereby certify that this document is a true
and correct copy of the original on file in this
office.

Cynthia K. King
Signature

As Custodian of records
Title

9/26/2016
Date

By: Barbara Yaroslavsky
Barbara Yaroslavsky, Chair
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke
Probation Against:

EVERETT DOUGLAS ALLEN, M.D.
Crescent City, California

Physician's and Surgeon's Certificate No.
G 54881

Respondent.

Case No. 19-2011-213748

OAH No. 2011080419

PROPOSED DECISION

This matter was heard before Administrative Law Judge Ann Elizabeth Sarli, Medical Quality Hearing Panel, Office of Administrative Hearings, on February 12, 2013 and March 7, 2013, in Sacramento California.

Mara Faust, Deputy Attorney General, represented complainant.

Everett Douglas Allen, M.D., represented himself.

Evidence was presented. The record closed, but was reopened on April 15, 2013, to accept emails and supporting documents from respondent. The emails and supporting documents were marked as Exhibit H and admitted in evidence as administrative hearsay. The record was closed and the matter submitted for decision on April 15, 2013.

FACTUAL FINDINGS

1. On June 8, 1985, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 54881 to Everett Douglas Allen, M.D. (respondent).

2. In a disciplinary action entitled "In the Matter of the Accusation against Everett Douglas Allen M.D.," Case Number 12-2005-170456, the Board issued a Decision on March 13, 2009, effective April 13, 2009, in which respondent's Physician's and

Surgeon's Certificate (certificate) was revoked for unprofessional conduct due to violations of drug statutes, use of controlled substances and exclusion from the Board's diversion program. However, the revocation was stayed and respondent's certificate was suspended for one year. He was placed on probation for a period of 10 years with certain terms and conditions, including conditions precedent to his return to practicing. Respondent has not practiced medicine since probation was imposed, as he did not meet the conditions precedent to practicing.

3. On June 16, 2011, Linda K. Whitney, the Board's Executive Director, made and filed the Petition to Revoke Probation in her official capacity. The Petition alleges that respondent failed to comply with Probation Conditions 3, 4, 5, 6, 7 and 20 of the Board's decision.

4. Respondent timely filed a Notice of Defense and Request for Hearing. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et. seq.

Failure to Comply With Biological Fluid Testing

5. Probation Condition 3 of the terms and conditions of respondent's probation requires:

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon the request of the Board or its designee. A certified copy of any laboratory test results may be received in evidence in any proceeding between the Board and the respondent. Failure to submit to, or failure to complete the required biological fluid testing, is a violation of probation.

6. Respondent was advised by the Board's probation monitor on May 7, 2009 that he was required to submit to biological fluid testing at his own expense and that failure to do so was a violation of probation. Respondent indicated that he understood the repercussions for failing to submit to biological fluid testing. Respondent was directed to use First Lab for biological fluid testing. First Lab suspended respondent between November 23, 2010 and December 15, 2010, due to his failure to pay for testing. In February 2011, respondent failed to call in as required on the 8th, the 20th and the 27th. In January 2011, he failed to call in on the 8th, the 22nd and 23rd.

7. Respondent's failure to submit to biological fluid testing constitutes a violation of Probation Condition 3 of the Board's Decision, and, pursuant to the Board's Decision, constitutes cause to impose the disciplinary order of revocation, which was stayed.

Failure to Pay the Cost of Psychiatric Evaluations

8. Probation Condition 4 of the terms and conditions of respondent's probation requires:

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter may be required by the Board or its designee, respondent shall undergo a complete psychiatric evaluation (and psychological testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall consider any information provided by the Board or its designee and any other information the psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its designee. Psychiatrist evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement.

Respondent shall pay the costs of all psychiatric evaluations and psychological testing. Respondent shall comply with all restrictions or conditions recommended by the evaluating psychiatrist within 15 calendar days after being notified by the Board or its designee. Failure to undergo a complete psychiatric evaluation and psychological testing, or comply with the required additional conditions or restrictions, is a violation of probation. Respondent shall not engage in the practice of medicine until notified by the Board or its designee that respondent is mentally fit to practice medicine safely. The period of time that respondent is not practicing medicine shall not be counted toward completion of the term of probation. (Italics added)

9. Respondent participated in the psychiatric and psychological evaluations required by Probation Condition 4, but did not pay the fees due. The Board requested the payment in writing on September 24, 2010, and respondent has not yet paid for the evaluations.

10. Respondent's failure to pay the costs of psychiatric evaluations constitutes a violation of Probation Condition 4 of the Board's Decision, and, pursuant to the Board's Decision, constitutes cause to impose the disciplinary order of revocation, which was stayed.

Failure to Pay the Cost of Psychotherapy Evaluations and Failure to Timely Submit Quarterly Psychotherapy Reports

11. Probation Condition 5 of the terms and conditions of respondent's probation requires:

Within 60 calendar days of the effective date of this decision, respondent shall submit to the Board or its designee for prior approval the name and qualifications of a board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Upon approval, respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

The psychotherapist shall consider any information provided by the Board or its designee and any other information the psychotherapist deems relevant and shall furnish a written evaluation report to the Board or its designee. Respondent shall cooperate in providing the psychotherapist any information and documents that the psychotherapist may deem pertinent. *Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee.* The Board or its designee may require respondent to undergo psychiatric evaluation by a Board-appointed board certified psychiatrist.

If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is mentally fit to resume the practice of medicine without restrictions. *Respondent shall pay the costs of all psychotherapy and psychiatric evaluations.* Failure to undergo and continue psychotherapy treatment, or comply with any required modification in the frequency of psychotherapy, is a violation of probation. (Italics added)

12. Respondent's treating psychotherapist, Dr. Robert E. Soper, sent the Board only three reports, dated March 4, 2011, April 26, 2010, October 21, 2009. Dr. Soper testified at hearing and explained that he had not understood that he was to send reports quarterly, and he will begin doing so.

13. Respondent's failure to cause Dr. Soper to timely submit quarterly psychotherapy reports to the Board constitutes a violation of Probation Condition 5 of the Board's Decision, and, pursuant to the Board's Decision, constitutes cause to impose the disciplinary order of revocation, which was stayed.

14. Respondent participated in the psychological evaluation required by Probation Condition 5, but did not pay the fees due. The Board requested the payment in writing on September 24, 2010, and respondent has not yet paid for the psychological evaluation.

15. Respondent's failure to pay the costs of psychological evaluation constitutes a violation of Probation Condition 5 of the Board's Decision, and, pursuant to the Board's Decision, constitutes cause to impose the disciplinary order of revocation, which was stayed.

Failure to Pay the Costs of Medical Evaluations

16. Probation Condition 6 of the terms and conditions of respondent's probation requires, in pertinent part:

Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee....

Respondent shall pay the costs of the medical evaluation (s) and treatment. (Italics added)

17. Respondent participated in a medical evaluation with Dr. Schafer, but did not pay the fees due. The Board requested the payment in writing on September 24, 2010, and respondent has not yet paid for the medical evaluation.

18. Respondent's failure to pay the costs of medical evaluation constitutes a violation of probation under Probation Condition 6 of the Board's Decision, and, pursuant to the Board's Decision, constitutes cause to impose the disciplinary order of revocation, which was stayed.

Failure to Participate in and Successfully Complete the PACE Requirement

19. Probation Condition 7 of the terms and conditions of respondent's probation requires, in pertinent part:

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a clinical training and educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California-San Diego School of Medicine (Program).... Respondent shall complete the Program not later than six months after respondent's initial enrollment unless the Board or its designee agrees in writing to a later time for completion. Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation. Respondent shall not practice medicine until respondent has successfully completed the Program....

20. Respondent was not permitted to enroll in PACE during the one-year license suspension imposed by the Board's Decision. Respondent's probation monitor advised him to enroll in PACE within 60 days after his one-year suspension. She gave him a copy of the PACE application and he executed an acknowledgement. As of the date of the hearing, respondent had not enrolled in PACE.

21. Respondent's failure to enroll in and complete successfully all phases of the PACE program, or a Board approved equivalent program constitutes a violation of probation under Probation Condition 7 of the Board's Decision, and, pursuant to the Board's Decision, constitutes cause to impose the disciplinary order of revocation, which was stayed.

Failure to Pay Probation Monitoring Costs

22. Probation Condition 20 of the terms and conditions of respondent's probation requires:

Respondent shall pay the costs associated with probation monitoring each year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

23. Respondent has not paid the costs of probation monitoring.

24. Respondent's failure to pay the costs of probation monitoring constitutes a violation of probation under Probation Condition 20 of the Board's Decision, and, pursuant to the Board's Decision, constitutes cause to impose the disciplinary order of revocation, which was stayed.

Respondent's Defenses

25. Respondent acknowledged that he has not complied with Probation Conditions 3, 4, 5, 6, 7 and 20. He testified that during the course of his one-year suspension and subsequent probationary term, he has made efforts to acquire the funds necessary to meet these obligations. He has kept his probation monitors advised of his financial circumstances and his inability to meet the obligations. Respondent has had severe medical problems, including cardiac problems, in the last few years, which prevented him from doing any meaningful work. The funds he had available to him to pay for biological fluid testing were "frozen" by the IRS. He has existed on a lump sum pension payment and loans from his friends. He is now receiving general assistance.

26. Since October 2010, respondent has been negotiating with the California Department of Rehabilitation (DOR) and the Workers' Compensation Carrier (SCIF) of

his last employer to secure funding for his attendance at PACE and for biological fluid testing. Some evidence was presented from a DOR witness at the February 12, 2013, hearing that DOR and SCIF were preparing to pay for respondent's enrollment in PACE. The hearing was continued to March 7, 2013 to allow collection of additional information and to allow DOR and SCIF to arrange financing for PACE. Additional information was received on March 7, 2013, and thereafter from DOR and SCIF, confirming that a check for \$4,000 was paid to PACE for respondent's assessment and that PACE has scheduled respondent's assessment for May 14 and 15, 2013.

27. Respondent testified that when he completes the PACE assessment, he has friends and family members who are willing to make him additional loans, he has employment prospects and is eligible for Social Security. He requests that the Board not revoke his probation and give him this last chance to meet his probationary obligations.

Discussion

28. The evidence is persuasive that respondent's failure to comply with the conditions of probation is due in large part to his lack of funds. At hearing, respondent demonstrated he has taken action to remedy his financial circumstances so that he can begin meeting his obligations. Dr. Robert E. Soper travelled from Eureka to the hearing to testify that he is confident that respondent's cocaine dependence is in "long term remission."

29. Respondent may be afforded a final chance to comply with his probationary terms and conditions. However, the public interest would not be served by continuing his current probationary order. Respondent has not practiced medicine since September 2005. He has not been drug tested for 4 years. His term of probation is ten years, but there is no tolling provision for non-practice or for failure to abide by probationary terms and conditions. Thus, his current probation terminates on April 13, 2019. It would be in the best interest of the public to craft a new probationary order, extending respondent's probationary term and imposing conditions precedent to his resumption of practice. The probation order below prohibits respondent from practicing medicine until he has successfully completed PACE and completed six months of random biological fluid testing, with negative results.

LEGAL CONCLUSIONS

1. Business and Professions Code (B&P Code) section 2227 provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or subject to other discipline the Board deems proper.

2. The Board's Decision, effective May 13, 2009 contains the following provision:

Failure to comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation or a Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

3. As set forth in the Findings, it was established by clear and convincing evidence that respondent failed to comply with Probation Conditions 3, 4, 5, 6, 7 and 20 of the Board's decision. The violation of each Probation Condition constitutes a separate cause for discipline.

ORDER

The stayed revocation issued by the Board Decision in the disciplinary action entitled "In the Matter of the Accusation against Everett Douglas Allen M.D." Case Number 12-2005-170456, is lifted and the revocation of respondent's certificate is re-instated. However, the revocation is stayed, and respondent shall be placed on probation for a period of 10 years, subject to the following terms and conditions.

1. Clinical Training Program (Condition Precedent to Practice)

Respondent shall enroll in the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine (Program) and shall participate in the PACE assessment on May 14 and 15, 2013. Respondent shall successfully complete the PACE Program not later than six (6) months after respondent's initial enrollment, unless the Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a Comprehensive Assessment, comprised of a two-day assessment of respondent's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to respondent's area of practice and, at minimum, a 40 hour program of clinical education in any area of practice in which the Program determines respondent is deficient and which takes into account data obtained from the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting respondent's practice of medicine. Respondent shall comply with all Program recommendations.

At the completion of any additional educational or clinical training, respondent shall submit to and pass an examination. Determination as to whether respondent successfully passed the examination or successfully completed the program is solely within the Program's discretion.

Respondent shall not practice medicine until respondent has successfully completed the Program and has been so notified by the Board or its designee in writing, except that respondent may practice in a clinical training program approved by the Board or its designee. Respondent's practice of medicine shall be restricted only to that which is required by the approved training program.

2. Professional Enhancement Program

Within three months after respondent secures employment as a physician, after successfully completing the PACE program, respondent shall participate in a professional enhancement program equivalent to the one offered by the PACE, which shall include quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at respondent's expense during the term of probation, or until the Board or its designee determines that further participation is no longer necessary.

3. Controlled Substances - Abstain From Use (Condition Precedent to Practice and Continuing Throughout Probation)

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, respondent shall notify the Board or its designee of: the issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use of that substance to the Board or

its designee, the Board or its designee shall notify respondent to cease all practice of medicine immediately, and respondent shall immediately comply. Respondent shall not resume the practice of medicine until notified by the Board in writing, or until the issue has been adjudicated through a final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of issuing the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. A decision shall be submitted to the Board within 15 days of the close of the record, unless good cause can be shown for the delay. Any period of time respondent is subject to the cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of a request, the notification and order to cease practice shall be lifted and dissolved.

4. Alcohol - Abstain From Use (Condition Precedent to Practice and Continuing Throughout Probation)

Respondent shall abstain completely from the use of products or beverages containing alcohol.

If respondent has a confirmed positive biological fluid test for alcohol, the Board or its designee shall notify respondent to cease all practice of medicine immediately, and respondent shall immediately comply. Respondent shall not resume the practice of medicine until notified by the Board in writing, or until the issue has been adjudicated through a final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of issuing the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. A decision shall be submitted to the Board within 15 days of the close of the record, unless good cause can be shown for the delay. Any period of time respondent is subject to the cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of a request, the notification and order to cease practice shall be lifted and dissolved.

5. Biological Fluid Testing (Condition Precedent to Practice and Continuing Throughout Probation)

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Within 60 days of the effective date of this decision, respondent shall contract with a laboratory or service approved in advance by the Board or its designee that will conduct random, unannounced, observed, biological fluid testing. The contract shall require results of the tests to be transmitted by the laboratory or service directly to the Board or its designee within four hours of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation. A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent.

Respondent is prohibited from practicing medicine until the Board or its designee has reviewed biological fluid testing results for a six month continuous period and determined that respondent has established a continuous period of verified sobriety and is safe to practice.

If respondent fails to cooperate in a random biological fluid testing program after the Board or its designee has authorized his return to practice (after the verified six continuous month period of prohibited substance free testing) the Board or its designee shall notify respondent to cease all practice of medicine immediately, and respondent shall immediately comply. Respondent shall not resume the practice of medicine until notified by the Board in writing, or until the issue has been adjudicated through a final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of issuing the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. A decision shall be submitted to the Board within 15 days of the close of the record, unless good cause can be shown for the delay. Any period of time respondent is subject to the cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of a request, the notification and order to cease practice shall be lifted and dissolved.

6. Psychotherapy

Respondent shall continue receiving psychotherapy until the Board or its designee deems that no further psychotherapy is necessary. Respondent may continue treating

with Dr. Robert E. Soper, or shall submit to the Board or its designee for prior approval the name and qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders. Respondent shall undergo and continue psychotherapy treatment, including any modifications to the frequency of psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

Respondent shall have the treating psychiatrist/psychotherapist submit quarterly status reports to the Board or its designee.

Respondent shall have Dr. Soper submit delinquent reports within 60 days of the effective date of this decision.

The Board or its designee may require respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over respondent's license and the period of probation shall be extended until the Board determines that respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

7. Payment of Delinquent Costs of Psychiatric, Psychotherapy and Medical Evaluations and Probation Monitoring

Within 240 days from the effective date of this decision, respondent shall begin paying the Board or its designee delinquent costs for evaluations and probation monitoring in an installment plan to be approved by the Board or its designee.

8. Solo Practice Prohibition

Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) respondent is the sole physician practitioner at that location.

Respondent shall not engage in the practice of medicine until notified in writing by the Board or its designee of its determination that respondent has secured a position that does not constitute solo practice. If, after respondent meets the conditions precedent to his return to practice (successful completion of PACE and biological fluid testing for six months), respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting, respondent shall cease practice and shall not resume practice until an appropriate practice setting is established.

If, during the course of probation, the respondent's practice setting changes and the respondent is no longer practicing in a setting in compliance with this Decision, the respondent shall notify the Board or its designee within 5 calendar days of the practice setting change. If respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, the Board or its designee shall order respondent to immediately cease practice, and respondent shall comply with the order to cease practice within three (3) days, and shall continue not practicing until such time as the Board or its designee advises respondent otherwise in writing. Respondent shall not resume practice until the Board confirms that respondent has found an appropriate practice setting that complies with this condition.

9. Notification

Within seven (7) days of the effective date of this Decision, the respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

10. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

11. Obey All Laws

Respondent shall obey all federal, state and local laws and all rules governing the practice of medicine in California and shall remain in full compliance with any court ordered criminal probation, payments, and other orders.

12. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

13. Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

14. Address Changes

Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

15. Place of Practice

Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

16. License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

17. Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice, respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

18. Interview with the Board or its Designee

Respondent shall be available in person, upon request, for interviews either at respondent's place of business or at the probation unit office, with or without prior notice, throughout the term of probation.

19. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time

respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall be temporarily suspended from practice, and respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; complete PACE, abstain from controlled substances and alcohol, biological fluid testing and payment of past due evaluation and monitoring costs.

20. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

21. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and impose all or any portion of the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.


22. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall, within 15 calendar days, deliver respondent's wallet and wall certificate to the Board or its designee, and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical certificate, the application shall be treated as a petition for reinstatement of a revoked certificate.

23. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

Dated: April 24, 2013



ANN ELIZABETH SARLI
Administrative Law Judge
Medical Quality Hearing Panel
Office of Administrative Hearings
State of California